

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA  
GREENSBORO**

THE UNITED STATES OF AMERICA, ex )  
rel. JOSEPH M. THOMAS, )

Plaintiff, )

v. )

DUKE UNIVERSITY, DUKE )  
UNIVERSITY HEALTH SYSTEM, INC., )  
WILLIAM M. FOSTER, Ph.D., and ERIN )  
N. POTTS-KANT )

Defendants. )

**Case No.: 1:17-cv-00276-CCE-JLW**

**MOTION TO ADOPT AND JOIN IN DEFENDANTS DUKE UNIVERSITY AND  
DUKE UNIVERSITY HEALTH SYSTEM, INC.’S MOTION FOR PARTIAL  
SUMMARY JUDGMENT**

NOW COMES Defendant, William Michael Foster, Ph.D. (“Defendant Foster”), by and through undersigned counsel and pursuant to Rule 56 of the Federal Rules of Civil Procedure, and respectfully moves the Court for the entry of partial summary judgment in Defendant Foster’s favor on Counts One, Two, and Three of the Amended Complaint for two categories of grants for which there is no evidence that Duke reported false research results. Defendant Foster further moves to adopt, conform to, have the benefit of and join in co-defendants Duke University and Duke University Health System, Inc.’s (“Duke”) Motion for Partial Summary Judgment (hereinafter “Duke’s Motion for Partial Summary Judgment”) (Doc. 281) on Counts One, Two and Three of the Amended Complaint.

For the first such category of grants – the “non-falsity grants” – Relator has stipulated that he has not identified any false data in the relevant grant applications or progress reports. A copy of the relevant stipulation is attached as Exhibit 1 to Duke’s Motion for Partial Summary Judgment. For the second category – the “publication only grants” – Relator has similarly stipulated that he has not identified any false data in the grant applications or progress reports. Instead, Relator claims that Duke and Foster are liable for those grants under the FCA solely because the grant documents correctly cite to published journal articles which, in turn, contain allegedly false data or statements. The truthful citation to a published article, even if the article is later found to have false data, is not a basis for liability under the FCA. A copy of this Stipulation is attached as Exhibit 2 to Duke’s Motion for Partial Summary Judgment.

This Motion is based upon the pleadings, the controlling law, and any Memoranda submitted in Support of Duke’s Motion For Partial Summary Judgment, and upon such other material properly of record at the time of the Court's ruling on this matter.

WHEREFORE, Defendant Foster respectfully requests that the Court enter partial summary judgment in his favor on Counts One, Two and Three for the two categories of grants listed above, and, so as to reduce the burden on this Court and to avoid repetitive pleadings, Defendant Foster further adopts Duke’s Memorandum in Support of its Motion for Partial Summary Judgment.

This the 31<sup>st</sup> day of October, 2018.

/s/ Richard S. Glaser, Jr.

Richard S. Glaser, Jr.

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*Counsel for Defendant William M. Foster,  
Ph.D.*

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **MOTION TO ADOPT AND JOIN IN DEFENDANTS DUKE UNIVERSITY AND DUKE UNIVERSITY HEALTH SYSTEM, INC.'S MOTION FOR PARTIAL SUMMARY JUDGMENT** was electronically filed with the Clerk of Court using the CM/ECF system, which will send a Notice of Electronic Filing to counsel of record in this matter.

This the 31<sup>st</sup> day of October, 2018.

/s/ Richard S. Glaser, Jr.

Richard S. Glaser, Jr.

N.C. Bar No: 13998

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